BANKRUPTCY REFORM/Fraud Limits for Debtors Under the Median Income

SUBJECT: **Bankruptcy Reform Act of 1999 . . . S. 625. Grassley motion to table the Moynihan amendment No. 2663.**

ACTION: MOTION TO TABLE AGREED TO, 55-42

SYNOPSIS: As reported, S. 625, will enact reforms to prevent creditors who have the means of paying their debts from unjustly filing for bankruptcy, will enact reforms to protect consumers from unfair credit practices, and will enact business bankruptcy reforms. The bill is similar to the bipartisan bill considered last session (see 105th Congress, 2nd session, vote No. 313).

The Moynihan amendment would provide that the new restrictions on running up debt immediately before declaring bankruptcy would only apply to bankrupts who had incomes above the national median income, which is currently $49,000 per year. (The bill will provide that consumer debts owed to a single creditor aggregating more than $250 for luxury goods or services purchased within 90 days before declaring bankruptcy will be presumed to be nondischargeable. Cash advances that are extensions of credit under an open-end credit plan aggregating more than $750 to all creditors within 70 days of declaring bankruptcy will also be presumed to be nondischargeable.) For bankrupts with incomes below the national median the Moynihan amendment would set a limit of $1,075: for consumer debts owed to a single creditor incurred within 60 days of declaring bankruptcy; and for cash advances to all creditors incurred within 60 days of declaring bankruptcy (these limits are the same limits as are in current law).

Debate was limited by unanimous consent. After debate, Senator Grassley moved to table the Moynihan amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

An increasingly common, fraudulent practice of people who know they are about to go into bankruptcy is to run up large credit card debts by buying luxury items or just by getting cash advances, and then having those debts erased as soon as they go into bankruptcy. Currently, people who borrow more than $1,075 right before bankruptcy or who go on credit card spending sprees for

(See other side)

YEAS (55)			NAYS (42)			NOT VOTING (2)	
Republicans (51 or 98%)		Democrats (4 or 9%)	Republicans (1 or 2%)	Democrats (41 or 91%)		Republicans (2)	Democrats (0)
Abraham	Helms	Biden	Snowe	Akaka	Kennedy	McCain-2	
Allard	Hutchinson	Johnson		Baucus	Kerrey	Voinovich-2	
Ashcroft	Hutchison	Robb		Bayh	Kerry		
Bennett	Inhofe	Torricelli		Bingaman	Kohl		
Bond	Jeffords			Boxer	Landrieu		
Brownback	Kyl			Breaux	Lautenberg		
Bunning	Lott			Bryan	Leahy		
Burns	Lugar			Byrd	Levin		
Campbell	Mack			Cleland	Lieberman		
Chafee, Lincoln	McConnell			Lincoln	Lincoln		
Cochran	Murkowski			Daschle	Mikulski		
Collins	Nickles			Dodd	Moynihan		
Coverdell	Roberts			Dorgan	Murray		
Craig	Roth			Durbin	Reed		
Crapo	Santorum			Edwards	Reid		
DeWine	Sessions			Feingold	Rockefeller		
Domenici	Shelby			Feinstein	Sarbanes		
Enzi	Smith, Bob			Graham	Schumer		
Frist	Smith, Gordon			Harkin	Wellstone		
Gorton	Specter			Hollings	Wyden		
Gramm	Stevens			Inouye			
Grams	Thomas						
Grassley	Thompson						
Gregg	Thurmond						
Hagel	Warner						
Hatch							

VOTING PRESENT (1)
Fitzgerald

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

more than that amount are presumed to be engaging in fraud and must be able to justify their actions in bankruptcy court or those debts are nondischargeable. This bill will lower the limits to $250 for each credit card and to $750 for cash borrowing. We think that these limits are very reasonable. Under this bill, it will still be possible for someone to charge $249-worth of caviar on a credit card minutes before declaring bankruptcy, and that debt will be erased. Only if the bill goes over $250 will a debtor have to justify the purchase in order to be able to get the debt discharged. Our colleagues think we are being unreasonable for debtors who have incomes below the national average. They think that such debtors should be allowed to run up to $1,075 bills for each creditor. Under the Moynihan amendment, if someone under the national median income wanted to buy a $1,000 pair of Gucci loafers the day before declaring bankruptcy, that purchase would not be presumed to be a luxury purchase. Only if the person had an income above the national median income would such a purchase be presumed nondischargeable. We strongly oppose creating this weak double standard for bankrupts below the national median income. They should not be allowed to get away with fraud any more than other Americans should. We therefore support the motion to table.

Those opposing the motion to table contended:

The Moynihan amendment would let low-income debtors borrow more than high-income debtors shortly before they declare bankruptcy. Those higher limits are justified for three reasons. First, low-income debtors are less likely to make unjustified purchases because they are much more likely than higher income debtors to have to use all of their income and all of their credit limits just to try to make ends meet. The abuses that are occurring are primarily by disreputable high-income people who are using bankruptcy as a financial planning tool. Second, higher limits are justified because low-income people have a much more limited ability to defend themselves in court. They cannot come up with the few hundred dollars they need up-front to get the legal help they need. Under this bill, their credit purchases over $250 may well be for necessary expenses, but they will not as a practical matter be able to prove to the court that they are not fraudulent purchases; high-income debtors who incur similar debt will have lawyers who will make their cases for them. Third, and relatedly, low-income debtors are much more susceptible to illegal pressure by creditors to sign reaffirmation agreements. The lower limits in this bill will only increase that illegal pressure. Thus, this bill's proposed limits on credit card debt are unnecessary and punitive for low-income debtors. The Moynihan amendment would raise those limits. We urge our colleagues to support this amendment.